

**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

KAREN ANN BUCK,

Plaintiff,

v.

KILOLO KIJAKAZI,

Acting Commissioner of Social Security,<sup>1</sup>

Defendant.

Case No. 1:21-cv-00304-SKO

ORDER ON PLAINTIFF'S SOCIAL  
SECURITY COMPLAINT

(Doc. 1)

**I. INTRODUCTION**

On March 2, 2021, Plaintiff Karen Ann Buck ("Plaintiff") filed a complaint under 42 U.S.C. § 405(g) seeking judicial review of a final decision of the Commissioner of Social Security (the "Commissioner" or "Defendant") denying her application for disability insurance benefits ("DIB") under Title II of the Social Security Act (the "Act"). (Doc. 1.) The matter is currently before the Court on the parties' briefs, which were submitted, without oral argument, to the Honorable Sheila K. Oberto, United States Magistrate Judge.<sup>2</sup>

<sup>1</sup> On July 9, 2021, Kilolo Kijakazi was named Acting Commissioner of the Social Security Administration. *See* <https://www.ssa.gov/history/commissioners.html>. She is therefore substituted as the defendant in this action. *See* 42 U.S.C. § 405(g) (referring to the "Commissioner's Answer"); 20 C.F.R. § 422.210(d) ("the person holding the Office of the Commissioner shall, in [their] official capacity, be the proper defendant").

<sup>2</sup> The parties consented to the jurisdiction of a U.S. Magistrate Judge. (*See* Doc. 10.)

## II. BACKGROUND

Plaintiff was born on July 24, 1961, completed high school, can communicate in English, and previously worked as an account clerk. (Administrative Record (“AR”) 29, 67, 81, 198, 209, 211, 247, 255, 578.) Plaintiff filed a claim for DIB on August 21, 2017, alleging she became disabled on November 13, 2014, due to ADD, ADHD, anxiety, and depressive disorder. (AR 67–68, 81–82, 198, 210, 247, 255.)

### A. Relevant Evidence of Record<sup>3</sup>

#### 1. Medical Evidence

Plaintiff presented to the Adventist Health Physicians Network in April 2013, complaining that she was “very stressed” about work problems and the “threatening behavior of her supervisor that started last week.” (AR 436.) She described herself as shaky, unable to concentrate, depressed and having nightmares, but that Xanax was helping “some.” (AR 436.) Jay D. Kerr, M.D., noted that Plaintiff was in “[n]o acute distress” but that her mood and affect was “stressed/anxious.” (AR 439.) Dr. Kerr observed that Plaintiff was “off work due to severity of her symptoms and condition” and that she “may need formal counseling.” (AR 440.)

In May 2013, Plaintiff returned for medication refills. (AR 432.) She reported doing “better being off work” and feeling less stressed and less depressed.” (AR 432.) Upon physical examination, Dr. Kerr found Plaintiff cooperative, with appropriate mood and affect, and in no acute distress and with clear coherent speech. (AR 434.) She “appear[ed] stressed with discussing work matters,” and cried while discussing the “prospect of going back to work under the same supervisor.” (AR 434.) Dr. Kerr observed Plaintiff was “not recovering well with stress of what happened at work to her” and was having posttraumatic stress, such that it was not in her “best interest at this time to have her go back to work . . . as it appears that she will go back to the same supervisor when she returns to work.” (AR 435.) He recommended that she continue off work for another month, continuing her medications, and counseling. (AR 435.)

Plaintiff underwent counseling with psychologist Mariellen R. Reiber, Psy.D. with Kings

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<sup>3</sup> Because the parties are familiar with the medical evidence, it is summarized here only to the extent relevant to the contested issues.

1 Counseling Center in May 2013. (AR 445–49.) She complained of anxiety, poor concentration,  
2 low self-esteem, low energy, being anxious all day, confusion, panic attacks, stress, anger,  
3 forgetfulness, depressed mood, libido change, flashbacks, sciatic nerve problems mood changes,  
4 ringing in her ears, and being easily distracted. (AR 446, 448, 449.). Dr. Reiber assessed Plaintiff  
5 with adjustment disorder with anxiety and depression. (AR 446, 448.)

6 In June 2013, Plaintiff reported to Dr. Kerr that Dr. Reiber’s counseling sessions had been  
7 “helping a lot with her recovery and dealing with issues.” (AR 396.) Dr. Kerr found Plaintiff  
8 anxious and stressed but oriented, cooperative, in no acute distress and with clear coherent speech  
9 and intact cognitive function. (AR 398.) He noted she is “slowly improving, with the help of  
10 extensive counseling and therapy” and should continue for at least a couple more sessions of  
11 counseling before returning to work. (AR 399.)

12 In October 2013, Plaintiff complained to Dr. Kerr that she was having anxiety because she  
13 was due to be laid off in January. (AR 374.) She was in no acute distress, but with  
14 “nervous/anxious” mood. (AR 376–77.) Dr. Kerr advised her to start an exercise regimen and “to  
15 seriously consider restarting psychotherapy.” (AR 377.)

16 In December 2013, Plaintiff reported to Dr. Kerr that she was “very stressed about being  
17 transferred to the prison yard to work, in place of being laid off” and claimed she had started having  
18 panic attacks. (AR 367.) Dr. Kerr found her anxious but not in acute distress. (AR 369.) He  
19 recommended she seek further psychological evaluation and treatment and “be off work for the  
20 next 1-2 months due to severe stress [and] anxiety issues.” (AR 369–70.)

21 Plaintiff again saw Dr. Reiber for counseling in January 2014. The handwritten treatment  
22 notes from the session are difficult to discern (*see* AR 569–73), but indicate that “prison bothers  
23 [Plaintiff] bad” and “no job here in town excites [her],” so it is “hard to fill out applications.” (AR  
24 573.) That same month, Plaintiff saw Dr. Kerr. (AR 365.) She complained of continued depression  
25 and severe anxiety, but that Dr. Reiber was “helping her work through her issues.” (AR 365.) No  
26 acute distress was noted, but stressed mood and affect was observed. (AR 425.)

27 Dr. Kerr noted in February 2014 that Plaintiff “is feeling better being off work, with less  
28 stress, depression [and] no panic attacks.” (AR 421.) She reported continuing to see Dr. Reiber

1 and that she had an appointment to see a psychiatrist. (AR 421.) Dr. Kerr noted that Plaintiff  
2 “continues to have a difficult time with trying to cope with going back to work, because of the  
3 excessive stress she had on-the-job with her supervisors. [S]he is also very stressed with the  
4 thought of returning to the prison and having to interact with inmates.” (AR 423.) He stated that  
5 it is not in Plaintiff’s “best interest to return to her current job, due to the excessive stress and  
6 worsening of her mental illness.” (AR 423.)

7 In March 2014, Plaintiff reported she saw the psychiatrist but did not “connect well” with  
8 him. (AR 416.) She continued to complain of symptoms of stress about work at the prison and  
9 “issues related to paperwork with disability.” (AR 416.) Dr. Kerr documented anxiety, but  
10 otherwise normal results, including no acute distress. (AR 418.) In May 2014, Dr. Kerr noted  
11 Plaintiff was “cooperative” with appropriate mood and affect. (AR 409.)

12 Plaintiff presented for an independent medical evaluation with psychiatrist Gary L.  
13 Cavanaugh, M.D., in October 2014. (AR 575–82.) He noted she was “cooperative with the  
14 evaluation.” (AR 575.) Plaintiff reported that she cries frequently, has ten panic attacks a month,  
15 and avoids stressful situations. (AR 576.) She takes antidepressants and denies psychiatric  
16 hospitalizations. (AR 577.) Upon examination, Dr. Cavanaugh found Plaintiff “alert, spontaneous,  
17 and generally cooperative but very dramatic.” (AR 578.) Her thoughts were circumstantial, her  
18 affect modulated, and her mood neutral. (AR 578.) She denied hallucinations, delusions, and  
19 current suicidal or homicidal ideation. (AR 578.) She claimed she is fearful of being a passenger  
20 in a car and has panic attacks. (AR 578.) She was oriented to time, place, and person. (AR 579.)  
21 According to Dr. Cavanaugh, Plaintiff’s immediate memory appeared slightly reduced, and her  
22 recent and remote memory was intact but vague. (AR 579.) Plaintiff was able to solve simple  
23 calculations and a simple change-making problem, but her fund of general information was intact  
24 at a low level. (AR 579.) Dr. Cavanaugh found Plaintiff’s responses to malingering screening  
25 questions did not suggest gross malingering, and her judgment in simple situations appeared intact.  
26 (AR 579.) Her attention span and concentration were at least slightly decreased, and she put forth  
27 variable effort during the interview. (AR 579.) Dr. Cavanaugh assessed her intelligence in the  
28 low-average range. (AR 579.) His diagnostic impression of Plaintiff was documented as persistent

1 depressive disorder or dysthymia, unspecified anxiety disorder, personality disorder with histrionic  
2 and somaticizing features, and stimulant abuse or dependence “by history.” (AR 581.)

3 Plaintiff terminated services with Dr. Reiber in April 2016. (AR 340–41.) In the  
4 termination summary, Dr. Reiber noted Plaintiff had reported symptoms of anxiety, stress,  
5 nightmares, irritability, anger, concentration difficulties, mood difficulties, relationship conflicts,  
6 depression, and family losses. (AR 340.) Plaintiff’s diagnosis of adjustment disorder with anxiety  
7 and depression was documented. (AR 341.) Dr. Reiber explained Plaintiff’s coping skills had  
8 “improved greatly,” with some goals “fully met” and other goals expected to progress on “her own”  
9 (AR 340.) Dr. Reiber observed Plaintiff “reported significant [symptom] reduction” at the time  
10 treatment was terminated. (AR 341.)

11 In January 2017, Plaintiff complained to Dr. Kerr of increased anxiety and stress while her  
12 daughter and grandchildren were living with her. (AR 323.) Upon examination, Dr. Kerr found  
13 Plaintiff cooperative and non-suicidal, with normal judgment and anxious mood and affect. (AR  
14 326.) She was given a refill of Xanax. (AR 327.) Plaintiff had a normal mental status exam in  
15 February 2017. (AR 321.) In July 2017, Plaintiff was alert and interactive with normal affect, and  
16 in no acute distress. (AR 298.)

17 Plaintiff presented for medication refills in August 2017, and reported her mood “has been  
18 doing OK.” (AR 293.) She reported trying marijuana and that she wanted to get a “card.” (AR  
19 295.) Dr. Kerr found her cooperative and non-suicidal, with normal judgment and anxiety. (AR  
20 296.) Plaintiff’s depression and anxiety was documented as “stable on medication.” (AR 296.) In  
21 November 2017, Plaintiff’s mental status examination showed she was cooperative, alert, oriented,  
22 and in no acute distress, with normal judgment. (AR 612.)

23 Plaintiff established care with Candice Golez, M.D., in December 2017. (AR 608.) She  
24 complained of depression, which was controlled on medication. (AR 608.) Upon physical  
25 examination, Dr. Golez found Plaintiff found alert, oriented, well-kempt in appearance, with good  
26 eye contact, normal speech, normal affect, normal mood, and not in acute distress. (AR 608.) In  
27 January 2018, her physical examination was same as the month prior. (AR 606–07.) Dr. Golez  
28 described Plaintiff’s depression with anxiety as “stable.” (AR 607.)

1 Plaintiff complained to Dr. Golez in February 2018 that her “main problem is  
2 concentration,” which is why “she doesn’t think she is able to work.” (AR 603.) Her mental status  
3 examination was normal. (AR 604.) During this visit, Plaintiff provided Dr. Golez with physical  
4 and mental evaluation forms, but Dr. Golez declined, noting that since this was Plaintiff’s third  
5 visit with her and with her long history of mental health problems, “I do not think I am fit to fill  
6 out her form.” (AR 604.)

7 In April 2018, Plaintiff returned to Dr. Golez for medication refills, and stated her new  
8 medication was “working well.” (AR 599). Dr. Golez documented a normal mental status  
9 examination and characterized Plaintiff’s depression with anxiety as “stable” (AR 599–600.) Dr.  
10 Golez found Plaintiff’s mental status normal in September 2018 and described the Plaintiff’s  
11 depression with anxiety as “stable.” (AR 597.)

12 Plaintiff complained of worsening anxiety and depression in February 2019. (AR 591.) Dr.  
13 Golez noted Plaintiff had good eye contact and normal speech, mood, and affect. (AR 592.) She  
14 denied suicidal or homicidal ideations and was in not in acute distress. (AR 591–92.) Dr. Golez  
15 gave Plaintiff a trial sample of Trintellix, and noted that her lack of concentration could be  
16 attributed to depression, sleep apnea, or ADHD. (AR 592.)

17 In March 2019, Plaintiff reported that physical activity has helped with her mood and that  
18 she declined to start the new medication provided at last visit. (AR 589.) Dr. Golez assessed  
19 Plaintiff with benzodiazepine dependence, which Plaintiff endorsed. (AR 589–90.) Dr. Golez also  
20 noted “chronic” lack of concentration caused by an attention and concentration deficit. (AR 590.)

## 21 **2. Opinion Evidence**

22 Following his examination of Plaintiff in October 2014, Dr. Cavanaugh opined that Plaintiff  
23 is permanently “incapacitated for the performance of her usual duties.” (AR 582.) He explained  
24 that Plaintiff’s

25 ability to appropriately interact with peers, supervisors, and clients is impaired by  
26 the combination of her problems and the resultant over-reactiveness, emotional  
27 lability, focus on somatic issues, and anxiety. Her regular attendance at work would  
28 also be affected by these factors.

[. . .]

1 It is difficult to sort out what might be some degree of exaggeration noted in the  
 2 MMPI-2 profile from her dramatic and somatically focused style, along with her  
 3 need for attention and support for her various symptoms and issues. Even if there  
 4 may be some degree of exaggeration, however, what is left is such that she could  
 5 not effectively, productively, and consistently carry out her duties.

6 (AR 582.)

7 In December 2017, Alan Goldberg, Psy.D., a state agency physician, reviewed the record  
 8 and assessed Plaintiff's mental residual functional capacity (RFC).<sup>4</sup> (AR 75–77.) Dr. Goldberg  
 9 opined that Plaintiff

10 should be able to meet the following criteria on a sustained basis in a competitive,  
 11 remunerative work context where there is relatively low interpersonal contact (e.g.,  
 12 low contact with the public, working alone or with limited contact with supervisor  
 13 or co-workers): To understand, carry out, and remember simple instructions (e.g.,  
 14 understanding and learning terms, instructions, and procedures; maintaining  
 15 attention /concentration for approximately 2 hour blocks; understanding, carrying  
 16 out, & remembering 1 to 2 step instructions; recognizing a mistake and correcting  
 17 it; being able to work consistently and at a reasonable pace for approximately 2  
 18 hour segments between arrival, first break, lunch, second break, and departure;  
 19 attending work regularly without excessive early departures or absences during the  
 20 typical 40 hour work week); to make simple judgments about work-related  
 21 decisions; to respond appropriately to supervision, co-workers, and social  
 22 interactions in the workplace, when interactions are limited in scope, frequency,  
 23 and duration (e.g., asking simple questions or requesting assistance, accepting  
 24 instructions, responding appropriately to criticism from supervisors, cooperating  
 25 with others, appropriately handling disagreements with others, not distracting  
 26 others or exhibiting behavioral extremes); and to deal with changes in a routine  
 27 work setting.

28 (AR 76–77.) Upon reconsideration in April 2018, another state agency physician, M. Koretzky,  
 Ph.D., reviewed the record and found Plaintiff is capable of the following: maintaining attendance;  
 completing a routine workweek at a consistent pace; interacting superficially with the public;  
 getting along with coworkers and supervisors for routine task requirements; and adapting to routine  
 changes in the work environment. (AR 89–90.)

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<sup>4</sup> RFC is an assessment of an individual's ability to do sustained work-related physical and mental activities in a work setting on a regular and continuing basis of 8 hours a day, for 5 days a week, or an equivalent work schedule. TITLES II & XVI: ASSESSING RESIDUAL FUNCTIONAL CAPACITY IN INITIAL CLAIMS, Social Security Ruling ("SSR") 96-8p (S.S.A. July 2, 1996). The RFC assessment considers only functional limitations and restrictions that result from an individual's medically determinable impairment or combination of impairments. *Id.* "In determining a claimant's RFC, an ALJ must consider all relevant evidence in the record including, inter alia, medical records, lay evidence, and 'the effects of symptoms, including pain, that are reasonably attributed to a medically determinable impairment.'" *Robbins v. Soc. Sec. Admin.*, 466 F.3d 880, 883 (9th Cir. 2006).



1 Dr. Golez completed two “Mental Residual Functional Capacity Questionnaire” in March  
2 and May 2019, noting Plaintiff’s diagnoses of major depression and anxiety. (AR 354–56, 361–  
3 63.) She opined that Plaintiff’s inattention problems preclude performance for 15% or more of an  
4 8-hour workday with regard to remembering locations, work-like procedures, understanding and  
5 remembering very short and simple instructions, and understanding and remembering detailed  
6 instructions. (AR 354, 361.) Dr. Golez also opined that Plaintiff was “easily distracted,” which  
7 would preclude of performance for 15% or more of an 8-hour workday for maintaining attention  
8 and concentration for extended periods of time; sustaining an ordinary routine without special  
9 supervision; working in coordination with or in proximity to others without being distracted by  
10 them; making simple work-related decisions; and completing a normal workday without  
11 interruptions from psychologically based symptoms. (AR 355, 362.) Dr. Golez further opined that  
12 Plaintiff is “not very good with change and planning—these cause her anxiety,” such that they  
13 preclude 15% or more of an 8-hour workday for traveling in unfamiliar places or use of public  
14 transportation; and setting realistic goals or making plans independently of others. (AR 355, 362.)  
15 According to Dr. Golez, Plaintiff would be absent or unable to complete a workday five days or  
16 more a month, but able to manage benefit payments. (AR 356, 363.) She opined that Plaintiff’s  
17 limitations began in December 2013. (AR 356, 363.)

18 **B. Administrative Proceedings**

19 The Commissioner denied Plaintiff’s application for benefits initially on January 2, 2018,  
20 and again on reconsideration on April 16, 2018. (AR 95–98, 102–07.) Consequently, Plaintiff  
21 requested a hearing before an Administrative Law Judge (“ALJ”). (AR 108–09.) The ALJ  
22 conducted a hearing on August 29, 2019. (AR 37–66.) Plaintiff appeared at the hearing with her  
23 non-attorney representative and testified as to her alleged disabling conditions and work history.  
24 (AR 44–57.)

25 **1. Plaintiff’s Testimony**

26 Plaintiff testified she lives in a house with her husband. (AR 44–45.) She can  
27 “sometimes” perform household chores when she is not experiencing “depression, anxiety, [and]  
28 irritable bowel (IBS),” which is about 20 days per month. (AR 45.) According to Plaintiff, on a



1 typical day she is able to begin an activity such as vacuuming, but she will become distracted,  
 2 and the task does not get completed. (AR 46.) Her husband accompanies her to appointments  
 3 and grocery shopping because she is “afraid of anxiety, irritable bowel, [and] panic attacks.” (AR  
 4 46.) Plaintiff testified that she has 12 panic attacks per month lasting 20 minutes. (AR 47.) She  
 5 is taking medication for her mental health., but stopped going to therapy because “it didn’t help.”  
 6 (AR 47–48.) According to Plaintiff, her mental health treatment, including medications, do not  
 7 help. (AR 48–49.) Plaintiff testified that she is unable to concentrate and cannot read a book past  
 8 the third page. (AR 49.) Plaintiff stated that “the depression is affecting the anxiety. Or maybe  
 9 the anxiety and the not being able to focus on anything and the frustration that I go through is just  
 10 depressing.” (AR 50.) According to Plaintiff, she is worried about side effects from her  
 11 medications. (AR 50–51.) She testified that she lies down every day because she “[doesn’t] feel  
 12 like doing anything.” (AR 52.)

## 13           **2. Vocational Expert’s Testimony**

14           A Vocational Expert (“VE”) also testified at the hearing that Plaintiff had past work as an  
 15 account clerk, Dictionary of Operational Titles (DOT) code 216.482-010, which was sedentary  
 16 work, with a specific vocational preparation (SVP)<sup>5</sup> of 5. (AR 60–61.) The ALJ asked the VE to  
 17 consider a person of Plaintiff’s age, education, and with his work experience and posed a series of  
 18 hypotheticals about this person. (AR 58–59.) The VE was to assume this person can perform  
 19 medium exertional work but should avoid concentrated exposure to workplace hazards such as  
 20 dangerous moving machinery and unprotected heights. (AR 59.) The individual can understand,  
 21 remember, and carry out instructions consistent with unskilled work but can perform no fast-paced  
 22 production work. (AR 59.) The individual can also have occasional interaction with the public,  
 23 coworkers, and supervisors. (AR 59.) The VE testified that such a person could not perform  
 24 Plaintiff’s past work, but could perform other jobs in the national economy, such as machine feeder,  
 25 DOT code 699.686-010, medium work, with an SVP of 2; hand packager, DOT code 920.587-018,

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26           <sup>5</sup> Specific vocational preparation, as defined in DOT, App. C, is the amount of lapsed time required by a typical worker  
 27 to learn the techniques, acquire the information, and develop the facility needed for average performance in a specific  
 28 job-worker situation. DOT, Appendix C – Components of the Definition Trailer, 1991 WL 688702 (1991). Jobs in  
 the DOT are assigned SVP levels ranging from 1 (the lowest level – “short demonstration only”) to 9 (the highest level  
 – over 10 years of preparation). *Id.*

1 medium work, with an SVP of 2; and laundry worker, DOT code 361.685-018, medium work, with  
2 an SVP of 2. (AR 59–60.) The result would be the same if the individual could have no interaction  
3 with the public, could avoid exposure to excessive vibration, and could work at all exertional levels.  
4 (AR 60–61.)

5 The ALJ asked the VE, in a second hypothetical, to consider an individual who: can do  
6 work at the light exertional level but should avoid concentrated exposure to excessive vibration;  
7 can occasionally climb ladders, ropes, or scaffolds; should avoid concentrated exposure to  
8 workplace hazards such as dangerous moving machinery and unprotected heights; and should avoid  
9 concentrated exposure to excessive vibration. (AR 61.) This individual can understand, remember,  
10 and carry out simple instructions consistent with unskilled work but cannot perform fast-paced  
11 production work. (AR 61.) The individual can have occasional interaction with coworkers and  
12 supervisors but no interaction with the public. (AR 61.) The VE testified that such a person could  
13 not perform Plaintiff’s past work, but could perform other light jobs in the national economy, such  
14 as housekeeper, DOT code 323.687-014, with an SVP of 2; small product assembler, DOT code  
15 706.684-022, with an SVP of 2; and hand cleaner, DOT code 709.687-010, with an SVP of 2. (AR  
16 61–62.) According to the VE, all of the jobs identified would be available even with an additional  
17 limitation of requiring one to two five-minute breaks. (AR 63.) No work would be available,  
18 however, if the person would be off task for 10% of the day plus regularly scheduled breaks or  
19 would miss work one to two days per month. (AR 63.)

20 Plaintiff’s attorney posed a hypothetical involving a person who was unable to complete an  
21 eight-hour workday two days per month. (AR 64.) The VE testified that there would be no work  
22 such a person could perform. (AR 64.) The same was true for a person who would need  
23 unscheduled breaks every one to two hours for ten minutes and would need to walk around every  
24 30 minutes for 10 minutes. (AR 65.)

### 25 **C. The ALJ’s Decision**

26 In a decision dated September 24, 2019, the ALJ found that Plaintiff was not disabled, as  
27 defined by the Act. (AR 15–31.) The ALJ conducted the five-step disability analysis set forth in  
28 20 C.F.R. § 404.1520. (AR 17–31.) The ALJ decided that Plaintiff met the insured status

1 requirements of the Act through March 31, 2019, and she had not engaged in substantial gainful  
2 activity between November 13, 2014, the alleged onset date (step one), through her date last  
3 insured. (AR 17.) At step two, the ALJ found Plaintiff's following impairments to be severe:  
4 depression, anxiety disorder, panic disorder, and personality disorder. (AR 18–19.) Plaintiff did  
5 not have an impairment or combination of impairments that met or medically equaled one of the  
6 listed impairments in 20 C.F.R. Part 404, Subpart P, Appendix 1 (“the Listings”) (step three). (AR  
7 19–21.)

8 The ALJ then assessed Plaintiff's RFC and applied the assessment at steps four and five.  
9 See 20 C.F.R. § 404.1520(a)(4) (“Before we go from step three to step four, we assess your residual  
10 functional capacity . . . . We use this residual functional capacity assessment at both step four and  
11 step five when we evaluate your claim at these steps.”). The ALJ determined that Plaintiff had the  
12 RFC:

13 to perform a full range of work at all exertional levels but with the following non-  
14 exertional limitations: she should avoid concentrated exposure to workplace  
15 hazards such as dangerous moving machinery and unprotected heights. She can  
16 understand, remember, and carry out simple instructions consistent with unskilled  
17 work. She can perform no fast-paced production work (that is, hourly production  
goals). She can have no interaction with the public. She can have occasional  
interaction with coworkers and supervisors.

18 (AR 21–29.) Although the ALJ recognized that Plaintiff's impairments “could reasonably be  
19 expected to cause the alleged symptoms[,]” the ALJ rejected Plaintiff's subjective testimony as  
20 “not entirely consistent with the medical evidence and other evidence in the record for the reasons  
21 explained in this decision.” (AR 21–22.)

22 The ALJ determined that, given her RFC, Plaintiff could not perform her past relevant work  
23 (step four), but she could perform a significant number of other jobs in the local and national  
24 economies, specifically machine feeder, hand packager, and laundry worker (step five). (AR 30–  
25 31.) The ALJ concluded that Plaintiff was not disabled from November 13, 2014, through the date  
26 of the decision. (AR 31.)

27 Plaintiff sought review of this decision before the Appeals Council, which denied review  
28 on May 28, 2020. (AR 6–11.) Therefore, the ALJ's decision became the final decision of the

Commissioner. 20 C.F.R. § 404.981.

### III. LEGAL STANDARD

#### A. Applicable Law

An individual is considered “disabled” for purposes of disability benefits if they are unable “to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.” 42 U.S.C. § 423(d)(1)(A). However, “[a]n individual shall be determined to be under a disability only if [their] physical or mental impairment or impairments are of such severity that [they] are not only unable to do [their] previous work but cannot, considering [their] age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy.” *Id.* § 423(d)(2)(A).

“The Social Security Regulations set out a five-step sequential process for determining whether a claimant is disabled within the meaning of the Social Security Act.” *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999) (citing 20 C.F.R. § 404.1520); *see also* 20 C.F.R. § 416.920. The Ninth Circuit has provided the following description of the sequential evaluation analysis:

In step one, the ALJ determines whether a claimant is currently engaged in substantial gainful activity. If so, the claimant is not disabled. If not, the ALJ proceeds to step two and evaluates whether the claimant has a medically severe impairment or combination of impairments. If not, the claimant is not disabled. If so, the ALJ proceeds to step three and considers whether the impairment or combination of impairments meets or equals a listed impairment under 20 C.F.R. pt. 404, subpt. P, [a]pp. 1. If so, the claimant is automatically presumed disabled. If not, the ALJ proceeds to step four and assesses whether the claimant is capable of performing [their] past relevant work. If so, the claimant is not disabled. If not, the ALJ proceeds to step five and examines whether the claimant has the [RFC] . . . to perform any other substantial gainful activity in the national economy. If so, the claimant is not disabled. If not, the claimant is disabled.

*Burch v. Barnhart*, 400 F.3d 676, 679 (9th Cir. 2005); *see, e.g.*, 20 C.F.R. § 416.920(a)(4) (providing the “five-step sequential evaluation process” for SSI claimants). “If a claimant is found to be ‘disabled’ or ‘not disabled’ at any step in the sequence, there is no need to consider subsequent steps.” *Tackett*, 180 F.3d at 1098 (citing 20 C.F.R. § 404.1520); 20 C.F.R. § 416.920.

“The claimant carries the initial burden of proving a disability in steps one through four of the analysis.” *Burch*, 400 F.3d at 679 (citing *Swenson v. Sullivan*, 876 F.2d 683, 687 (9th Cir.

1 1989)). “However, if a claimant establishes an inability to continue [their] past work, the burden  
 2 shifts to the Commissioner in step five to show that the claimant can perform other substantial  
 3 gainful work.” *Id.* (citing *Swenson*, 876 F.2d at 687).

#### 4 **B. Scope of Review**

5 “This court may set aside the Commissioner’s denial of [social security] benefits [only]  
 6 when the ALJ’s findings are based on legal error or are not supported by substantial evidence in  
 7 the record as a whole.” *Tackett*, 180 F.3d at 1097 (citation omitted). “Substantial evidence” means  
 8 “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.”  
 9 *Richardson v. Perales*, 402 U.S. 389, 401 (1971) (quoting *Consol. Edison Co. of N.Y. v. NLRB*,  
 10 305 U.S. 197, 229 (1938)). “Substantial evidence is more than a mere scintilla but less than a  
 11 preponderance.” *Ryan v. Comm’r of Soc. Sec.*, 528 F.3d 1194, 1198 (9th Cir. 2008).

12 “This is a highly deferential standard of review . . . .” *Valentine v. Comm’r of Soc. Sec.*  
 13 *Admin.*, 574 F.3d 685, 690 (9th Cir. 2009). The ALJ’s decision denying benefits “will be disturbed  
 14 only if that decision is not supported by substantial evidence or it is based upon legal error.”  
 15 *Tidwell v. Apfel*, 161 F.3d 599, 601 (9th Cir. 1999). Additionally, “[t]he court will uphold the  
 16 ALJ’s conclusion when the evidence is susceptible to more than one rational interpretation.” *Id.*;  
 17 *see, e.g., Edlund v. Massanari*, 253 F.3d 1152, 1156 (9th Cir. 2001) (“If the evidence is susceptible  
 18 to more than one rational interpretation, the court may not substitute its judgment for that of the  
 19 Commissioner.”) (citations omitted).

20 In reviewing the Commissioner’s decision, the Court may not substitute its judgment for  
 21 that of the Commissioner. *Macri v. Chater*, 93 F.3d 540, 543 (9th Cir. 1996). Instead, the Court  
 22 must determine whether the Commissioner applied the proper legal standards and whether  
 23 substantial evidence exists in the record to support the Commissioner’s findings. *See Lewis v.*  
 24 *Astrue*, 498 F.3d 909, 911 (9th Cir. 2007). Nonetheless, “the Commissioner’s decision ‘cannot be  
 25 affirmed simply by isolating a specific quantum of supporting evidence.’” *Tackett*, 180 F.3d at  
 26 1098 (quoting *Sousa v. Callahan*, 143 F.3d 1240, 1243 (9th Cir. 1998)). “Rather, a court must  
 27 ‘consider the record as a whole, weighing both evidence that supports and evidence that detracts  
 28 from the [Commissioner’s] conclusion.’” *Id.* (quoting *Penny v. Sullivan*, 2 F.3d 953, 956 (9th Cir.

1 1993)).

2 Finally, courts “may not reverse an ALJ’s decision on account of an error that is harmless.”  
 3 *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012) (citing *Stout v. Comm’r, Soc. Sec. Admin.*,  
 4 454 F.3d 1050, 1055–56 (9th Cir. 2006)). Harmless error “exists when it is clear from the record  
 5 that ‘the ALJ’s error was inconsequential to the ultimate nondisability determination.’”  
 6 *Tommasetti v. Astrue*, 533 F.3d 1035, 1038 (9th Cir. 2008) (quoting *Robbins v. Soc. Sec. Admin.*,  
 7 466 F.3d 880, 885 (9th Cir. 2006)). “[T]he burden of showing that an error is harmful normally  
 8 falls upon the party attacking the agency’s determination.” *Shinseki v. Sanders*, 556 U.S. 396, 409  
 9 (2009) (citations omitted).

#### 10 IV. DISCUSSION

11 Plaintiff contends the ALJ erred in failing to properly articulate the reasons for rejecting the  
 12 opinion of Plaintiff’s treating physician Dr. Golez regarding Plaintiff’s mental limitations. She  
 13 also contends the ALJ failed to articulate clear and convincing reasons for rejecting Plaintiff’s  
 14 subjective-symptom testimony. Plaintiff asks this Court to remand for payment of benefits, or  
 15 alternatively for further proceedings. (Docs. 14, 17.)

16 The Commissioner contends that the ALJ reasonably considered Dr. Golez’s opinion, and  
 17 that substantial evidence supports the ALJ’s evaluation of Plaintiff’s symptoms. (Doc. 16.)

#### 18 A. The ALJ’s Treatment of Dr. Golez’s Opinion Was Not Erroneous

##### 19 1. Legal Standard

20 Plaintiff’s claim is governed by the agency’s “new” regulations concerning how ALJs must  
 21 evaluate medical opinions for claims filed on or after March 27, 2017. 20 C.F.R. § 404.1520c. The  
 22 regulations set “supportability” and “consistency” as “the most important factors” when  
 23 determining the opinions’ persuasiveness. 20 C.F.R. § 404.1520c(b)(2). And although the  
 24 regulations eliminate the “physician hierarchy,” deference to specific medical opinions, and  
 25 assigning “weight” to a medical opinion, the ALJ must still “articulate how [they] considered the  
 26 medical opinions” and “how persuasive [they] find all of the medical opinions.” 20 C.F.R. §  
 27 404.1520c(a)–(b).

28 Recently, the Ninth Circuit has issued the following guidance regarding treatment of

1 physicians’ opinions after implementation of the revised regulations:

2 The revised social security regulations are clearly irreconcilable with our caselaw  
 3 according special deference to the opinions of treating and examining physicians on  
 4 account of their relationship with the claimant. *See* 20 C.F.R. § 404.1520c(a) (“We  
 5 will not defer or give any specific evidentiary weight, including controlling weight,  
 6 to any medical opinion(s) . . . , including those from your medical sources.”). Our  
 7 requirement that ALJs provide “specific and legitimate reasons” for rejecting a  
 8 treating or examining doctor’s opinion, which stems from the special weight given  
 to such opinions, *see Murray*, 722 F.2d at 501–02, is likewise incompatible with the  
 revised regulations. Insisting that ALJs provide a more robust explanation when  
 discrediting evidence from certain sources necessarily favors the evidence from  
 those sources—contrary to the revised regulations.

9 *Woods v. Kijakazi*, 32 F.4th 785, 792 (9th Cir. 2022). Accordingly, under the new regulations, “the  
 10 decision to discredit any medical opinion, must simply be supported by substantial evidence.” *Id.*  
 11 at 787.

12 In conjunction with this requirement, “[t]he agency must ‘articulate . . . how persuasive’ it  
 13 finds ‘all of the medical opinions’ from each doctor or other source, 20 C.F.R. § 404.1520c(b), and  
 14 ‘explain how [it] considered the supportability and consistency factors’ in reaching these findings,  
 15 *id.* § 404.1520c(b)(2).” *Woods*, 32 F.4th at 792. “Supportability means the extent to which a  
 16 medical source supports the medical opinion by explaining the ‘relevant . . . objective medical  
 17 evidence.’” *Id.* at 791–92 (quoting 20 C.F.R. § 404.1520c(c)(1)) “Consistency means the extent  
 18 to which a medical opinion is ‘consistent . . . with the evidence from other medical sources and  
 19 nonmedical sources in the claim.’” *Id.* at 792 (quoting 20 C.F.R. § 404.1520c(c)(2)).

20 As the Ninth Circuit also observed,

21 The revised regulations recognize that a medical source’s relationship with the  
 22 claimant is still relevant when assessing the persuasiveness of the source’s opinion.  
 23 *See id.* § 404.1520c(c)(3). Thus, an ALJ can still consider the length and purpose  
 24 of the treatment relationship, the frequency of examinations, the kinds and extent of  
 25 examinations that the medical source has performed or ordered from specialists, and  
 whether the medical source has examined the claimant or merely reviewed the  
 claimant’s records. *Id.* § 404.1520c(c)(3)(i)–(v). However, the ALJ no longer needs  
 to make specific findings regarding these relationship factors:

26 *Woods*, 32 F.4th at 792. “A discussion of relationship factors may be appropriate when ‘two or  
 27 more medical opinions . . . about the same issue are . . . equally well-supported . . . and consistent  
 28 with the record . . . but are not exactly the same.’” *Id.* (quoting § 404.1520c(b)(3)). “In that case,



1 the ALJ ‘will articulate how [the agency] considered the other most persuasive factors.’” *Id.*

2 With these legal standards in mind, the Court reviews the weight given to Dr. Golez’s  
3 opinion.

## 4 **2. Analysis**

5 In weighing Dr. Golez’s opinion related to Plaintiff’s mental functioning, the ALJ reasoned  
6 as follows:

7 She also filled out some fill-in-the-blank and checkmark forms about mental  
8 functioning that are not supported and not consistent with the evidence (Exs. 7F;  
9 9F). She opined that the claimant’s depression and anxiety preclude performance  
10 for 15% or more of an 8-hour workday with regard to remembering locations, work-  
11 like procedures, understanding and remembering very short and simple instructions,  
12 and understanding and remembering detailed instructions (Exs. 7F/1; 9F). The only  
13 explanation Dr. Golez provided was “due to problems from inattention” (Exs. 7F/1;  
14 9F). Dr. Golez also opined preclusion of performance for 15% or more of an 8-hour  
15 workday for maintaining attention and concentration for extended periods of time,  
16 sustaining an ordinary routine without special supervision, working in coordination  
17 with or in proximity to others without being distracted by them, making simple  
18 work-related decisions and completing a normal workday with her only explanation  
19 a mention that the claimant is easily distracted (Exs. 7F/2; 9F). Similarly, she opined  
20 15 or more preclusion for traveling in unfamiliar places or use of public  
21 transportation and setting realistic goals or making plans independently of others  
22 only pointing out that “she is not very good” with change and planning (Exs. 7F/2;  
23 9F). She opined 5 or more absences or inability to complete a workday 5 times a  
24 month without explanation (Exs. 7F/3; 9F). Strangely, despite opining such extreme  
25 limitations she then opined the claimant is able to manage funds (Exs. 7F/3; 9F/3).  
26 Although she has only treated the claimant since December 2017, she explained the  
27 claimant’s limitations began in 2013 (Exs. 7F/3; 9F/3). The mental limitations she  
28 opined are simply not supported and not consistent with the evidence. Her opinion  
about mental functioning is not persuasive. Another document is simply a list of  
medications and is not a medical opinion (Ex. 10F). Overall her various opinion  
statements are not persuasive because they are not supported and they are not  
consistent with the evidence including the treatment notes.

(AR 28–29.)

23 The Court concludes that the ALJ properly evaluated the supportability and consistency of  
24 Dr. Golez’s opinion. As to supportability, the ALJ properly considered Dr. Golez’s failure to  
25 adequately explain her reasoning. *See* 20 C.F.R. § 404.1520c(c)(1) (requiring the ALJ to consider  
26 “supporting explanations presented by a medical source.”). As the ALJ observed, Dr. Golez’s  
27 opinion regarding Plaintiff’s mental limitations were cursory in nature and did not adequately  
28 explain why, for example, Plaintiff being “easily distracted” would so severely impair her such that

1 she would be precluded for 15% or more of an 8-hour workday from maintaining attention and  
2 concentration for extended periods of time; sustaining an ordinary routine without special  
3 supervision; working in coordination with or in proximity to others without being distracted by  
4 them; making simple work-related decisions; and completing a normal workday without  
5 interruptions from psychologically based symptoms. (AR 355, 362.) Dr. Golez also failed to  
6 provide an explanation why the opined limitations began in December 2013, when she had only  
7 begun seeing Plaintiff in December 2017. (AR 354, 356, 361, 363.) The lack of supporting  
8 explanations was a proper consideration in evaluating the supportability of Dr. Golez's opinion.  
9 See 20 C.F.R. § 404.1520c(c)(1); *Woods*, 32 F.4th at 794 (substantial evidence supported finding  
10 that medical opinion, expressed in a "fill-in-the-blank questionnaire," was "not persuasive because  
11 it is not supported by any explanation" or "pertinent exam findings."); *Ponce v. Comm'r of Soc.*  
12 *Sec.*, No. 1:20-CV-01664-EPG, 2022 WL 196529, at \*3 (E.D. Cal. Jan. 21, 2022) (declining to find  
13 the ALJ erroneously rejected medical opinion where given on a "checkbox form with no significant  
14 narrative explanation" and "no citation to record evidence.").

15 As to consistency, the ALJ found Dr. Golez's opinion concerning Plaintiff's mental  
16 limitations was generally inconsistent with the medical record, including her own treatment notes.  
17 Although the ALJ did not cite to any records in connection with this finding, the preceding  
18 paragraphs contain a summary of medical records with specific citations and explanation. (AR 22–  
19 25.) For example, the ALJ cited to a May 2014 treatment record reporting that Plaintiff had  
20 appropriate mood and affect. (AR 23, 409.) In April 2016, Plaintiff's adjustment disorder with  
21 anxiety and depression was noted, but also that her coping skills had "improved greatly," with some  
22 goals "fully met" and other goals expected to progress on "her own", with Plaintiff reporting  
23 "significant [symptom] reduction." (AR 341.) As the ALJ noted (AR 24), Plaintiff had normal  
24 mental status exams in February, July, August, and November 2017, with her treating provider  
25 noting that her depression and anxiety was "stable on medication." (AR 296, 298, 321, 612.)

26 Dr. Golez's treatment notes from January 2018 document Plaintiff as alert, oriented, well-  
27 kempt in appearance, with good eye contact, normal speech, normal affect, normal mood, and not  
28 in acute distress, with her depression with anxiety listed as "stable." (AR 607.) Plaintiff's mental

1 status examination by Dr. Golez was normal in February 2018. (AR 604.) She reported to Dr.  
2 Golez in April 2018 that her new medication was “working well,” and Dr. Golez documented a  
3 normal mental status examination and characterized Plaintiff’s depression with anxiety as “stable”  
4 (AR 599–600.) In September 2018, Dr. Golez again found Plaintiff’s mental status normal and  
5 described the Plaintiff’s depression with anxiety as “stable.” (AR 597.) Dr. Golez observed  
6 Plaintiff had good eye contact and normal speech, mood, and affect in February 2019. (AR 592.)  
7 In March 2019, Plaintiff reported that physical activity has helped with her mood. (AR 589.) Thus,  
8 while the medical record reflects that Plaintiff has mental impairments, it was reasonable for the  
9 ALJ to conclude that the record did not support the severity of Dr. Golez’s opined restrictions,  
10 including that Plaintiff was unable to understand and remember very short and simple instructions  
11 and make simple work-related decisions for 15% or more of the workday, and would miss 5 days  
12 or more days of work per month. (AR 354–56, 361–63.) Thus, the ALJ’s findings that Dr. Golez’s  
13 opinions were inconsistent with her own treatment notes and with the objective medical evidence  
14 as a whole are legally sufficient and supported by substantial evidence. *See Batson v. Comm’r Soc.*  
15 *Sec. Admin.*, 359 F.3d 1190, 1198 (9th Cir. 2004) (“When the evidence before the ALJ is subject  
16 to more than one rational interpretation, [the Court] must defer to the ALJ’s conclusion.”).

17 Plaintiff asserts that the ALJ’s finding was improper because it failed to “properly consider  
18 and evaluate the opinion” of examining physician Dr. Cavanaugh, which she contends “further  
19 supports” Dr. Golez’s opinion. (Doc. 14 at 13–16.) Plaintiff’s assessment by Dr. Cavanaugh,  
20 however, is not as supportive she would have the Court believe. For example, Dr. Cavanaugh  
21 found that Plaintiff could solve simple calculations and a simple change-making problem, that her  
22 “[j]udgment in simple situations” was intact, and that her attention span and concentration were  
23 only “*slightly* decreased.” (AR 579) (emphasis added).) These findings stand in stark contrast to  
24 the severe impairments opined by Dr. Golez regarding Plaintiff’s mental abilities. Moreover, as  
25 the ALJ pointed out (AR 28), Dr. Cavanaugh’s ultimate opinion was only that Plaintiff could not  
26 perform her “usual duties,” *i.e.*, her *past* work. (AR 582.) Nowhere in his opinion does he suggest  
27 that Plaintiff could not perform *any other* work. Yet Dr. Golez’s opinion, if credited, would dictate  
28 such a result per the VE’s testimony. (*See* AR 63–64 (no work available for a person who would

1 be off task for 10% of the day or would miss or be unable to complete an eight-hour workday one  
2 to two days per month.).)

3 In sum, the Court finds that the ALJ's reasons for the weight given to Dr. Golez's opinion  
4 are legally sufficient and supported by substantial evidence.

## 5 **B. The ALJ Properly Discounted Plaintiff's Subjective Symptom Allegations**

### 6 **1. Legal Standard**

7 The test for deciding whether to accept a claimant's subjective symptom testimony turns  
8 on whether the claimant produces medical evidence of an impairment that reasonably could be  
9 expected to produce the symptoms alleged. *Bunnell v. Sullivan*, 947 F.2d 341, 346 (9th Cir. 1991);  
10 *see also Reddick v. Chater*, 157 F.3d 715, 722 (9th Cir. 1998); *Smolen v. Chater*, 80 F.3d 1273,  
11 1281–82 & n.2 (9th Cir. 1996). The Commissioner may not discredit a claimant's testimony on  
12 the severity of symptoms merely because they are unsupported by objective medical evidence.  
13 *Reddick*, 157 F.3d at 722; *Bunnell*, 947 F.2d at 343, 345. If the ALJ finds the claimant's testimony  
14 not credible, the ALJ "must specifically make findings which support this conclusion." *Bunnell*,  
15 947 F.2d at 345. The ALJ must set forth "findings sufficiently specific to permit the court to  
16 conclude that the ALJ did not arbitrarily discredit claimant's testimony." *Thomas v. Barnhart*, 278  
17 F.3d 947, 958 (9th Cir. 2002); *see also Rollins v. Massanari*, 261 F.3d 853, 857 (9th Cir. 2001);  
18 *Bunnell*, 947 F.2d at 345-46. Unless there is evidence of malingering, the ALJ can reject the  
19 claimant's testimony about the severity of a claimant's symptoms only by offering "specific, clear  
20 and convincing reasons for doing so." *Smolen*, 80 F.3d at 1283-84; *see also Reddick*, 157 F.3d at  
21 722. The ALJ must identify what testimony is not credible and what evidence discredits the  
22 testimony. *Reddick*, 157 F.3d at 722; *Smolen*, 80 F.3d at 1284.

### 23 **2. Analysis**

24 As noted above, in determining Plaintiff's RFC, the ALJ concluded that Plaintiff's  
25 medically determinable impairments reasonably could be expected to cause the alleged symptoms.  
26 (AR 21.) The ALJ also found that Plaintiff's statements regarding the intensity, persistence and  
27 limiting effects of these symptoms were "inconsistent" with the RFC. (AR 22.) Because the ALJ  
28 did not make any finding of malingering, the ALJ was required to provide clear and convincing

1 reasons supported by substantial evidence for discounting Plaintiff's subjective symptom  
 2 allegations. *Smolen*, 80 F.3d at 1283-84; *Tommasetti v. Astrue*, 533 F.3d 1035, 1039-40 (9th Cir.  
 3 2008). Here, the ALJ provided at least three valid reasons for not fully recrediting Plaintiff's  
 4 testimony and allegations.

5 a. Inconsistent with Medical Evidence

6 First, the ALJ found Plaintiff's subjective symptom testimony to be inconsistent with the  
 7 objective medical evidence, which was summarized earlier in the decision. (AR 25.) An ALJ is  
 8 permitted to consider whether there is a lack of medical evidence to corroborate a claimant's  
 9 alleged symptoms so long as it is not the only reason for discounting a claimant's subjective  
 10 symptom allegations. *Burch*, 400 F.3d at 680-81. As detailed above, mental status examinations  
 11 during the relevant period were normal. (AR 296, 298, 321, 592, 597, 599–600, 604, 607, 612.)  
 12 Plaintiff's treatment providers documented her depression and anxiety as "stable" with medication  
 13 treatment.<sup>6</sup> (AR 296, 298, 321, 597, 599–600, 607, 612.) *See Warre v. Comm'r of Soc. Sec.*, 439  
 14 F.3d 1001, 1006 (9th Cir. 2006) (impairments that can be controlled effectively with medication  
 15 are not disabling).

16 b. Activities of Daily Living

17 Second, the ALJ determined that Plaintiff's activities of daily living are "not as limited as  
 18 would be expected in light of her allegations." (AR 25.) The ALJ noted that, according to  
 19 Plaintiff's spouse, Plaintiff lives independently, runs errands, performs house and yard work,  
 20 cooks, drives, handles funds, and performs her own personal care.<sup>7</sup> (AR 20, 229–36.) An ALJ

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21 <sup>6</sup> In rejecting Plaintiff's subjective complaints, the ALJ also characterized Plaintiff's treatment as "conservative." (AR  
 22 25.) It is unclear whether counseling and psychiatric medications such as Xanax constitutes conservative treatment.  
 23 (See, e.g., AR 327, 341, 436.) *See McKenzie v. Kijakazi*, No. 1:20-CV-0327 JLT, 2021 WL 4279015, at \*8 (E.D. Cal.  
 24 Sept. 21, 2021) (ALJ erred by finding claimant's prescribed treatment of Xanax, Latuda, Zoloft, and Hydroxyzine  
 25 conservative). The Court, however, does not need to reach that determination here because the ALJ provided other  
 26 valid reasons for discrediting Plaintiff's subjective complaints. *See Reyes v. Berryhill*, 716 F. App'x 714, 714 (9th Cir.  
 27 2018) (where ALJ provided valid reasons for discounting claimant's testimony, "[a]ny error in other reasons provided  
 28 by the ALJ was harmless"); *Batson*, 359 F.3d at 1197; *Williams v. Comm'r, Soc. Sec. Admin.*, Civ. No. 6:16-cv-  
 01543-MC, 2018 WL 1709505, \*3 (D. Or. Apr. 9, 2018) ("Because the ALJ is only required to provide a single valid  
 reason for rejecting a claimant's pain complaints, any one of the ALJ's reasons would be sufficient to affirm the overall  
 . . . determination.").

<sup>7</sup> The ALJ also cites to 124 pages of handwritten notes from Plaintiff's therapist as evidencing Plaintiff's  
 "involve[ment] with her family's complicated life." (AR 25 (citing AR 451–574).) These notes, as the ALJ admits,  
 are "mostly unreadable." (AR 23.) Plaintiff criticizes the ALJ's reliance on the notes as whole, asserting that they  
 give rise to a duty to develop the record. (See Doc. 14 at 28.) The Court need not resolve this issue, however, because

1 may properly consider a claimant's daily activities when evaluating credibility. *Fair v. Bowen*,  
2 885 F.2d 597, 603 (9th Cir. 1989) (the nature of daily activities may be considered when evaluating  
3 credibility). Moreover, in evaluating a claimant's credibility, an ALJ may consider inconsistencies  
4 between the claimant's testimony and the claimant's conduct and whether the claimant engages in  
5 daily activities inconsistent with the alleged symptoms. *Molina*, 674 F.3d at 1112. Even where  
6 those activities suggest some difficulty functioning, they are grounds for discrediting Plaintiff's  
7 testimony to the extent that they contradict claims of a totally debilitating impairment. *Id.* at 1113.

8       According to Plaintiff, the ALJ erred in failing to take into account her testimony that she  
9 is precluded from performing household tasks about 20 days per month, rendering her unable to  
10 work. (Doc. 14 at 27 (citing AR 45).) Plaintiff's husband's account of her activity level  
11 demonstrates otherwise. (See AR 229–36 (Plaintiff has no problem with daily personal care, feeds  
12 their two dogs, makes dinner for her and her husband “once or twice a week,” and does laundry  
13 but “does not always complete it that same day.”).) While disability claimants should not be  
14 penalized for attempting to lead normal lives in the face of their limitations, where the level of  
15 activity is inconsistent with a claimant's claimed limitation, those activities have bearing on the  
16 claimant's credibility. *Reddick*, 157 F.3d at 722. As the Ninth Circuit explained in *Fair*, 885 F.2d  
17 at 604, “if [the plaintiff] remains able to perform ordinary household and personal tasks, then he  
18 has not carried his burden of proving that his pain prevents him from returning to [work]. While  
19 such reasoning may not hold up in all cases . . . it is sufficient here, as [the plaintiff] has not put  
20 forward any evidence that reconciles the inconsistency between his words and his actions.” Such  
21 circumstances are evident in this case.

22       The ALJ's decision recognized that Plaintiff has some work limitations, but properly  
23 discredited Plaintiff's testimony that her limitations render her completely unable to work. *Fair*,  
24 885 F.2d at 604; see also *Bunnell*, 947 F.2d at 346 (“So long as the adjudicator makes specific  
25 findings that are supported by the record, the adjudicator may discredit the claimant's allegations  
26 based on inconsistencies in the testimony or on relevant character evidence.”). Where the ALJ

27  
28 the record contains sufficient other evidence, particularly Plaintiff's husband's statement, regarding Plaintiff's activity level.



1 makes a reasonable interpretation of the claimant's testimony, it is not the Court's role to second-  
2 guess it. *Rollins*, 261 F.3d at 857.

3 c. Reason for Work Cessation

4 Lastly, Plaintiff does not address the ALJ's finding that her work history undermines her  
5 subjective complaints. (AR 25.) An ALJ is allowed to make an adverse credibility finding based  
6 on a claimant's work history where the claimant lost their previous employment due to reasons that  
7 were not related to their disability. *See, e.g., Drouin v. Sullivan*, 966 F.2d 1255, 1258–59 (9th Cir.  
8 1992) (finding that the ALJ did not err by discounting the plaintiff's credibility because, in part,  
9 the plaintiff "did not lose her past two jobs because of pain"); *Caldwell v. Comm'r of Soc. Sec.*,  
10 No. 2:15-cv-1002-KJN, 2016 WL 4041331, at \*6 (E.D. Cal. July 26, 2016) (finding that "the ALJ  
11 reasonably relied on [the] plaintiff's work record in discounting her credibility" where "there [was]  
12 evidence suggesting that [the] plaintiff had stopped working for reasons not related to her  
13 impairments"); *Clark v. Colvin*, No. C13-0747-JCC, 2013 WL 6095842, at \*3 (W.D. Wash. Nov.  
14 20, 2013) (finding that the ALJ did not err in finding the claimant's "subjective complaints . . . less  
15 credible" based on the claimant's work history where the claimant's "job ended for economic  
16 reasons instead of impairment-related reasons").

17 According to Plaintiff, the reason she stopped working in December 2013 was due to a  
18 "reduction of force" that resulted in her being reassigned to the mailroom at the prison. (AR 210.)  
19 Her decision to cease employment was therefore unrelated to her impairments and undermines her  
20 assertion of total disability. Although Plaintiff may have been stressed by the thought of the  
21 reassignment, the record shows that such stress was directed at the prospect of continuing to work  
22 at the prison. (*See* AR 367, 423.) At best, this supports an inability by Plaintiff to perform her past  
23 work in a prison environment, with which the ALJ agreed, but not an inability to perform all work.  
24 The fact that Plaintiff stated to her counselor that it is "hard to fill out applications" because "no  
25 job here in town excites [her]" further evidences an unwillingness, rather than an inability, to work.  
26 (*See* AR 573.)

27 Plaintiff disagrees with the ALJ's interpretation of the evidence, but it is the ALJ's  
28 responsibility to resolve conflicts in the medical evidence and ambiguities in the record. *Andrews*



1 v. *Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995). Where the ALJ's interpretation of the record is  
2 reasonable, as it is here, it should not be second-guessed. *Rollins*, 261 F.3d at 857; *see also Thomas*,  
3 278 F.3d at 954 ("Where the evidence is susceptible to more than one rational interpretation, one  
4 of which supports the ALJ's decision, the ALJ's conclusion must be upheld.").

5 The Court finds the ALJ discounted Plaintiff's subjective symptom allegations for clear and  
6 convincing reasons supported by substantial evidence.

7 **V. CONCLUSION AND ORDER**

8 After consideration of Plaintiff's and the Commissioner's briefs and a thorough review of  
9 the record, the Court finds that the ALJ's decision is supported by substantial evidence and is  
10 therefore AFFIRMED. The Clerk of this Court is DIRECTED to enter judgment in favor of  
11 Defendant Kilolo Kijakazi, Acting Commissioner of Social Security, and against Plaintiff.

12 IT IS SO ORDERED.

13 Dated: August 1, 2022

14 /s/ Sheila K. Oberto  
15 UNITED STATES MAGISTRATE JUDGE  
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